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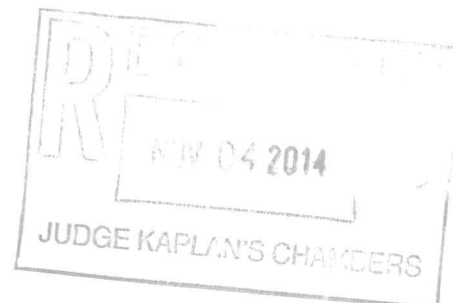
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November 4, 2014

MEMO ENDORSED



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Via ECF and Hand Delivery

Hon. Lewis A. Kaplan
United States District Judge
500 Pearl Street
New York, NY 10007

Re: *In re BNYM Corp. Foreign Exchange Transactions Litigation*, No. 12 MD 2335;
United States v. BNYM, No. 11 CV 6969

Dear Judge Kaplan:

The Bank of New York Mellon (“BNYM”) and David Nichols (collectively, “Defendants”) write briefly to respond to Plaintiffs’ November 3, 2014 letter (USAO Dkt. No. 131), which asks this Court to enjoin Defendants from taking 22 of the additional 23 non-party depositions that Defendants have identified. Plaintiffs’ letter is contrary to this Court’s October 6, 2014 order (Dkt No. 500), which directed the parties not to file letter surreplies. This Court thus should strike the letter and direct Plaintiffs to request any further injunction by motion.

Although Plaintiffs’ letter contains a number of inaccuracies, Defendants intend to comply with the Court’s October 6 order and will not respond to those inaccuracies here. If the Court nonetheless decides to consider Plaintiffs’ request for an additional injunction, Defendants request an opportunity to respond – including the opportunity to submit a proffer of relevance for each of the newly challenged 22 depositions. Any such response would include a showing that Plaintiffs repeatedly insisted that the Scheduling Order required advance disclosure of all depositions Defendants intend to conduct over each 90-day period; BNYM’s November 1 e-mail, sent 90 days before the close of discovery, was in response to that demand.

Respectfully submitted,

/s/ Reid M. Figel

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Memorandum Endorsement


If defendants wish to respond further with respect to the request to foreclose 22 of the additional 23 non-party depositions, they may do so by 2 p.m. tomorrow. Any such response shall be limited to a *brief* one paragraph proffer of relevance for each deposition.

The wrangling over discovery and the procedures for raising discovery matters with the Court is expensive, wasteful, undesirable, and suggests a regrettable and disappointing inability of able counsel to work cooperatively.

The Court has no desire to consider the imposition of sanctions on any lawyer or party, but counsel and clients should reflect on the fact that the subject now is coming to the fore.

SO ORDERED.

Dated: November 5, 2014



Lewis A. Kaplan
United States District Judge